

IN THE SUPREME COURT OF THE STATE OF HAWAI'I

In the Matter of the Amendment
of the
Hawai'i Board of Bar Examiners Rules of Procedure

ORDER ADOPTING THE HAWAI'I
BOARD OF BAR EXAMINERS RULES OF PROCEDURE
(By: Moon, C.J., Levinson, Nakayama, Acoba, and Duffy, JJ.)

IT IS HEREBY ORDERED, pursuant to Rule 1.3(d) of the Rules of the Supreme Court of the State of Hawai'i and effective January 1, 2004, that the Board of Examiners Procedural Rules approved by this court in 1985 are repealed and the Hawai'i Board of Bar Examiners Rules of Procedure, as attached hereto, are approved and adopted.

DATED: Honolulu, Hawai'i, August 14, 2003.

SUPREME COURT OF HAWAI'I
HAWAI'I BOARD OF BAR EXAMINERS

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PART 1

BOARD OF EXAMINERS; GENERAL PROVISIONS

Section 1.1 Chairperson. The Chairperson of the Board of Examiners (Board) shall preside over meetings of the Board.

Section 1.2 Vice-chairperson. The Vice-chairperson of the Board shall serve in the absence or disqualification of the Chairperson.

Section 1.3 Secretary. The Clerk of the Hawai'i Supreme Court (Clerk) shall serve as Secretary to the Board and may designate staff members to assist the Board. The Clerk or the Clerk's designee shall prepare and maintain the minutes of Board meetings.

Section 1.4 Staff. Any person assigned to provide services to the Board is authorized to act on behalf of the Board for duties specified herein. The Clerk, at the request of the Board Chair or the Board, may assign staff to provide other services to the Board or to act on the Board's behalf.

Section 1.5 Terms of Service; Number of Members. The Hawai'i Supreme Court (Supreme Court) shall determine the terms

of service of the Chairperson, Vice-chairperson, and other members of the Board. The Supreme Court shall determine the number of members who serve on the Board.

Section 1.6 Members. A Board member may serve only as long as the member is an active or inactive member of the Hawai'i Bar in good standing and is in good standing in any other jurisdiction in which the member is licensed to practice.

Section 1.7 Meetings. The Board shall convene when called into session by the Chairperson. Members may attend meetings by telephone or video conference. Board meetings and proceedings governed by these Rules are confidential, except as provided by Rule 1, RSCH.

Section 1.8 Quorum. Fifteen (15) Board members shall constitute a quorum to do business.

Section 1.9 Voting. Board members may vote in person or, upon written designation, by proxy.

Section 1.10 Conflict of Interest. Board members shall refrain from taking part in any proceeding in which a judge, similarly situated, would be required to abstain.

Section 1.11 Committees, Hearing Officers, Designees. The Chairperson may, from time to time, establish and appoint such committees, hearing officers, or designees as necessary to carry out the duties of the Board. The Chairperson may delegate the authority to act on behalf of the Board to a committee, hearing officer, designee, or combinations of committees, hearing officers, or designees.

Section 1.12 Confidential Communications. Except with respect to the Board, its members, the Supreme Court, and judiciary staff, communications between Board members, between a Board member and an applicant, or between a Board member and any other organization with respect to the qualifications of an applicant are confidential. This rule does not prohibit the Board, its members, the Supreme Court, or the judiciary staff from disclosing information in furtherance of an investigation of applicants under Rule 1, RSCH, or rules governing attorney conduct and discipline in any jurisdiction.

Section 1.13 Personnel. The Chairperson may retain personnel to carry out the duties of the Board under Rule 1, RSCH, and these Rules. Personnel retained by the Chairperson shall serve without pay or shall be paid from Board funds and shall not be employees of the Judiciary.

Section 1.14 Computation of Time; Additional Time After Service by Mail. (a) In computing any period of time prescribed or allowed by these Rules, the day of the act, event, or default after which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included unless it is a Saturday, a Sunday or a holiday, in which event the period shall run until the end of the next day that is not a Saturday, a Sunday, or a holiday. When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays and holidays shall be excluded from the computation. As used in this rule, "holiday" includes any day designated as such pursuant to section 8-1 of the Hawai'i Revised Statutes.

(b) When an applicant, the Board, a Board Committee, or a Board hearing officer, has the right or is required to do some act or take some action within a prescribed period after service of a notice or other paper and the notice or paper is served by mail, two (2) days shall be added to the prescribed period.

(c) Service by mail is deemed complete when a mailed item is received or refused or returned due to an incorrect address, provided the incorrect address is one provided by the applicant.

PART 2

APPLICATIONS; REVIEW OF APPLICATIONS

Section 2.1 Hawai'i Bar Application; Forms; Time to Submit.

(a) Each applicant shall submit, in duplicate, a Hawai'i Bar Application. The application shall be submitted on the forms prescribed and furnished by the Board and shall be verified and typewritten or machine printed.

(b) Applications for the February examination shall be submitted to the Clerk on or before the twentieth day of November preceding the examination. Applications for the July examination shall be submitted to the Clerk on or before the twentieth day of April preceding the examination.

(c) The applicant shall completely answer each item in the application.

Section 2.2 Educational Requirement; Certified Transcript.
The applicant shall provide a certified transcript or other

appropriate official documentation to verify the applicant's graduation from a law school accredited by the American Bar Association (ABA). If the applicant did not graduate from an ABA-accredited law school, the applicant shall provide evidence to establish that the applicant satisfies the years-of-practice requirement in Rule 1, RSCH.

Section 2.3 Fees. The applicant shall pay the filing and character report fees when the application is submitted. The filing fee is non-refundable and nontransferable. The Clerk shall reject without prejudice any application that is not accompanied by the fee unless the Supreme Court, by prior order, has waived the fee.

Section 2.4 Incomplete Applications. The Board or its Applications Review Committee (ARC) may reject applications that are incomplete or do not conform to the requirements of the application forms or these rules. Such rejections shall not be subject to further review, and shall be without prejudice to submission of a new application.

Section 2.5 Investigation of Applications; Application Held in Abeyance. (a) The Board, the ARC, the judiciary staff, or a Board designee shall review each application and may investigate the applicant's background and qualifications to determine whether to recommend to the Supreme Court that the applicant be allowed to sit for the Hawai'i Bar Examination or be admitted to the Bar of Hawai'i. The Board, the ARC, or the judiciary staff may contact such sources as necessary to obtain and verify information about the applicant. The review may include an interview with the applicant.

Section 2.6 Evaluation of Applicants for Good Character, Fitness to Practice, and Financial Responsibility by National Conference of Bar Examiners and Board. (a) Each applicant shall undergo a character investigation by the National Conference of Bar Examiners (NCBE). Each applicant shall submit the NCBE fee with his or her application. Each applicant is required to contact the NCBE to determine the amount of the fee. The Clerk shall dismiss without prejudice the application if the applicant does not submit the NCBE fee or submits an incorrect amount.

(b) The Board, the ARC, or the judiciary staff shall review the application to determine whether the applicant has provided character and fitness evidence. The Board or the ARC shall consider whether the evidence meets the standard of character and fitness set forth in Rule 1, RSCH.

(c) The following factors, among others, adversely reflect on an applicant's character and fitness to practice law and may

constitute cause for additional inquiry or a recommendation to deny the application:

- (1) unlawful conduct;
 - (2) academic misconduct;
 - (3) false statements;
 - (4) relevant and material omissions;
 - (5) misconduct in employment;
 - (6) acts involving, dishonesty, fraud, deceit, or misrepresentation;
 - (7) abuse of legal process;
 - (8) neglect of professional obligations;
 - (9) violation of a court order;
 - (10) denial of admission in another jurisdiction on character or fitness grounds;
 - (11) legal or professional disciplinary action in any jurisdiction;
 - (12) failure to conform conduct to the requirements of the law;
 - (13) a pattern of offenses, even ones of minor significance indicating indifference to legal obligation; and
 - (14) financial irresponsibility.
- (d) When reviewing an applicant's conduct, the following factors, among others, may be considered as mitigating factors:
- (1) the applicant's age at the time of the conduct;
 - (2) when the conduct occurred;
 - (3) reliability of the information concerning the conduct;
 - (4) seriousness of the conduct;
 - (5) circumstances in which the conduct occurred;
 - (6) the cumulative effect of conduct or information;
 - (7) evidence of rehabilitation;
 - (8) positive social contributions since the conduct;
 - (9) candor in the admissions process; and
 - (10) materiality of omissions or misrepresentations.

Section 2.7 Applicant Cooperation. The applicant shall cooperate with the Board, the ARC, and judiciary staff to provide sufficient information for a complete evaluation of the applicant.

Section 2.8 Application Updating. Until the applicant is admitted, the applicant is under a continuing obligation to keep his or her application current and must update responses when there is an addition to or a change in information previously furnished to the Board.

Section 2.9 Withdrawal of Application. An applicant may withdraw an application by submitting a written request to the Clerk at any time prior to administration of the Hawai'i Bar Examination. Fees shall not be refunded or transferred.

Section 2.10 Qualified Applicants. The Board shall recommend the names of applicants who are deemed qualified to sit for the Hawai'i Bar Examination to the Supreme Court.

Section 2.11 Recommendation of Denial of Application. If the Board or the ARC concludes an applicant has failed to establish character and fitness qualifications, it shall recommend denial of the application. The Clerk shall notify the applicant of the recommendation by certified mail with return receipt requested. The notice shall specify the grounds for the recommendation.

Section 2.12 Request for Hearing. (a) An applicant may seek review of the Board's or the ARC's recommendation to deny an application under Section 2.11 by filing, with the Clerk, a written request for a hearing. The request must be filed within twenty (20) days after receipt of the notice of the recommendation.

(b) The hearing shall be conducted in accordance with the provisions of Part 4.

PART 3

NON-STANDARD TESTING ACCOMMODATIONS

Section 3.1 Requests for Non-Standard Testing Accommodations; Forms. (a) A request for non-standard testing accommodations shall be on forms prescribed by the Board and shall consist of all of the following:

- (1) a statement of the applicant, including a description of the applicant's disability and the non-standard accommodations requested;
- (2) a certificate of the applicant's medical or psychological authority. The cost of obtaining professional certification including the certificate from medical and/psychological authority shall be borne by the applicant;
- (3) a certificate from any educational institution, employer, or other testing organization that provided non-standard accommodations to the applicant while the applicant attended the educational institution or was employed by the employer, or took other examinations; and
- (4) an authorization for release of records from the applicant's medical and/or psychological authorities for the purpose of determining whether the applicant has a disability as defined in Rule 1, RSCH, and

whether reasonable accommodation is appropriate.

(b) The applicant may file any additional documentation in support of the request.

(c) Except as provided in (e) below, the applicant shall file a request for non-standard testing accommodations with the application and within the time provided by Section 2.1(b).

(d) The Clerk shall provide the forms necessary to complete a request for non-standard testing accommodations.

(e) An applicant who becomes disabled after timely filing his or her application may submit a late request for non-standard testing accommodations after the application deadline if the applicant's application for the Hawai'i Bar Examination is complete in all other respects, and the applicant promptly submits a written request for non-standard testing accommodations, written certified medical documentation of the need for the non-standard accommodations that provides the nature and extent of the disability, the date the disability arose, and the non-standard testing accommodations requested.

(1) The Board's Americans with Disabilities Act (ADA) Committee or its designee shall consider emergency requests on a case-by-case basis.

(2) Decisions on emergency requests shall be made as soon as practicable and shall be communicated in writing to the applicant as soon as practicable. The ADA Committee or its designee may deny an emergency request if there is insufficient time remaining before the examination to make a determination on the merits or to provide appropriate accommodations without prejudice to the request for non-standard accommodations being carried over to the next regularly scheduled bar examination.

Section 3.2 Procedures for Review of Requests for Non-Standard Accommodations. (a) The ADA Committee or its designee, in conjunction with the ARC and other Board committees, shall review all requests for non-standard testing accommodations filed. Incomplete requests or requests that do not otherwise comply with the requirements of these Rules may be rejected for consideration by the ADA Committee or its designee.

(b) The ADA Committee or its designee may request an applicant to submit additional information in support of the applicant's request. The ADA Committee or its designee may seek the assistance of a medical, psychological, or other authority designated by the Board's ADA Committee or its designee in reviewing a request. The ADA Committee or its designee may request the applicant to undergo an independent medical and/or psychological examination at the Board's expense.

(c) The ADA Committee's or its designee's decision on a request shall be in writing and sent to the applicant by certified mail to the address provided by the applicant on the request. The ADA Committee's or its designee's recommendation to

deny or modify a request shall include a statement of the reasons for denial or modification. The ADA Committee or its designee shall also provide the applicant with a copy of the written report of any expert it consulted in reviewing the request and a copy of any independent medical examination performed at the request of the ADA Committee or its designee.

Section 3.3 Request for Hearing. (a) An applicant may seek review of the ADA Committee's or its designee's recommendation to deny or modify the applicant's request by filing a written request for a hearing with the Clerk within twenty (20) days after receiving notice of the recommendation.

(b) The hearing shall be conducted in accordance with the procedures in Part 4.

PART 4

HEARINGS; PETITION FOR REVIEW

Section 4.1 Hearing Officer or Panel. (a) The Chairperson may appoint a hearing officer or a hearing panel of up to three (3) Board members to consider an applicant's request for review of the Board's, Board committee's or its designee's recommendation to deny an application on character and fitness grounds or deny or modify a request for accommodations. If a panel is appointed, the Chairperson shall designate a chairperson of the panel to preside at the hearing. The hearing panel or officer shall be appointed no later than 60 days after the applicant's request for review was received by the Clerk.

(b) The Chairperson may appoint an attorney to represent the ARC or ADA committee before the hearing officer or panel.

(c) Hearing officers or panel members shall receive no compensation for their services, but may be reimbursed for travel and other expenses incidental to the performance of their duties.

(d) The hearing officer or panel shall schedule the hearing. The hearing may occur after the Hawai'i Bar Examination is administered, but shall be had no later than 180 days after the applicant's request for review was received by the Clerk. The Clerk shall notify the applicant, in writing of the time and place of the hearing, that the applicant may be represented by counsel and present such witnesses as the applicant may choose, and that the applicant must submit the applicant's witnesses and exhibit lists no later than ten days before the hearing.

(e) A hearing officer, hearing panel member, judiciary staff member, or the Clerk may administer oaths and affirmations for any hearing held pursuant to these Rules.

(f) The hearing officer or panel shall not be bound by the rules of evidence. Any oral or documentary evidence may be

received, but irrelevant, immaterial, or unduly repetitious evidence may be excluded. The hearing officer or panel shall give effect to the rules of privilege recognized by law and may take notice of judicially recognizable facts.

(g) The applicant bears the burden of proof by a preponderance of evidence.

(h) A hearing officer's or panel's recommendation shall be based upon consideration of the whole record and supported by the reliable, probative and substantial evidence in the record.

Section 4.2 Records; Shorthand Reporters; Transcripts. The hearing officer or panel shall record and preserve in writing, on tape, or by use of such other mechanical or electronic device as may be appropriate, the proceedings and evidence in its proceedings. If the record is preserved by stenographic means, the hearing officer or panel may engage the services of a shorthand reporter. The record need not be transcribed unless ordered by the hearing officer or panel. The original of any transcript shall be filed with the record.

Section 4.3 Recommendation to the Supreme Court. No later than 60 days after the hearing concludes, the hearing officer or panel shall submit written findings and recommendations to the supreme court. The Clerk shall serve upon the applicant a copy of the findings and recommendation. Service shall be made by certified mail with return receipt requested.

Section 4.4 Petition for Supreme Court Review. An applicant may file a petition with the Clerk for review of the hearing officer's or panel's recommendation within twenty (20) days after service of the findings and recommendation.